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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,258	02/22/2005	Gordon Alastair Bell	PPD 70111	5001

26748 7590 10/09/2007
SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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10/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,258

Applicant(s)

BELL, GORDON ALASTAIR

Examiner

Kristie L. Brooks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 02/22/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Application

1. Claims 1-13 are pending.

Information Disclosure Statement

2. The information disclosure statement filed February 22, 2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because there was no translation provided for JP 6256116 and GB 1513614. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 recites "wherein said adjuvant has little or no surfactant properties." It is unclear as to what Applicant has intended by the phrase "little or no surfactant properties". The specification does not provide a definition for "little or no surfactant properties". Therefore, a skilled artisan would not know the metes and bounds of the claims.

Claim Rejections - 35 USC § 103

5. Claims 1-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedorn et al. (US 5,650,102).

Applicant claims a microencapsulated agrochemical composition comprising an aqueous dispersion of microcapsules having material encapsulated therein wherein the material encapsulated within the microcapsules comprises (a) an agrochemical (b) a water-insoluble, bioperformance-enhancing adjuvant for said agrochemical wherein said adjuvant has little or no surfactant properties and (c) a water-immiscible solvent in which both the agrochemical and adjuvant are soluble.

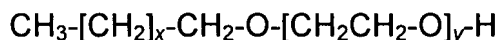
Determination of the scope and content of the prior art

(MPEP 2141.01)

Hagedorn et al. teach the preparation of microcapsule dispersions by
by an interface polyaddition process in which an oil-in-water emulsion is prepared

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from an oily phase, which comprises the substance to be encapsulated and a lipophilic substance capable of polyaddition, and an aqueous phase, and the reaction partner required for the polyaddition is then added to the aqueous phase, capsules with smaller particle sizes are obtained, with a saving in emulsifying energy, if an oil-soluble emulsifier is added to the oily phase before the emulsification (see the entire article, especially the abstract and column 2 lines 5-13). The substances that can be encapsulated include plant protection agents and insecticides (see the entire article, especially column 1 lines 10-12). The preferred oil-soluble emulsifiers are fatty acid esters, fatty amides, polyglycol ethers, polypropylene glycol ethers such as those with alcohols, thiols and carboxylic acid esters and fatty alcohol polyglycol ethers of the formula



in which x is an integer from 10 to 16 and y is an integer from 4 to 12 (see the entire article, especially column 2 lines 36-45). The lipophilic substances capable of polyaddition are aromatic, aliphatic and naphthenic hydrocarbons and mixtures thereof, chlorinated paraffins, naturally occurring oils of animal and vegetable origin, naturally occurring fats, and aromatic and aliphatic ethers (see the entire article, especially column 2 lines 64-67 through column 3 lines 1-8).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

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Hagedorn et al. do not teach an exemplified formulation of the combined components as claimed by Applicant.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make a microencapsulated agrochemical composition comprising an agrochemical, a water-insoluble, bioperformance-enhancing adjuvant and a water-immiscible solvent.

One of ordinary skill in the art would have been motivated to do this because Hagedorn et al. suggest a microcapsule dispersion comprising insecticides or plant protection agents, and utilizing emulsifiers such as fatty alcohol polypglycol ethers and lipophilic substances such as hydrocarbons and paraffins. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

6. Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedorn et al. (US 5,650,102) in view of Obayashi et al. (US 4,886,656).

Applicant claims a microencapsulated agrochemical composition comprising an aqueous dispersion of microcapsules having material encapsulated therein wherein the material encapsulated within the microcapsules comprises (a) an agrochemical (b) a water-insoluble, bioperformance-enhancing adjuvant for said agrochemical wherein said adjuvant has little or no surfactant properties and (c) a water-immiscible solvent in which both the agrochemical and adjuvant are soluble.

Determination of the scope and content of the prior art

(MPEP 2141.01)

The disclosure of Hagedorn et al. (US 4,808,408) has been set forth above. Specifically, Hagedorn et al. teach a microcapsule dispersion comprising insecticides or plant protection agents, and utilizing emulsifiers, which include polyglycol ethers, polypropylene glycol ethers such as those with alcohols, thiols and carboxylic acid esters and fatty alcohol polyglycol ethers fatty alcohol polypropylene glycol ethers and lipophilic substances such as hydrocarbons and paraffins.

Obayashi et al. teach an agrochemical formulation and method for reducing toxicity to fishes and shellfishes when applied to paddy fields comprising a lipophilic agriculturally active ingredient, and an organic compound (see the entire article, especially the abstract and column 1 lines 1-40 and 52-57). The lipophilic agriculturally active ingredients are compounds that have insecticidal, bactericidal, herbicidal activity and have lipophilic properties (see the entire article, especially column 1 lines 58-61).

**Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)**

Hagedorn et al. do not specifically teach a lipophilic agrochemical claimed by Applicant.

**Finding of prima facie obviousness
Rational and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use a lipophilic agrochemical in the microcapsule taught by Hagedorn et al.

One of ordinary skill in the art would have been motivated to do this because Hagedorn et al. suggest a microcapsule dispersion comprising insecticides or plant protection agents. Although Hagedorn et al. do not specify whether the insecticides or plant protection agents are lipophilic, it would be obvious to one of ordinary skill in the art because agricultural formulations comprising lipophilic insecticides are useful in reducing the toxicity to fish and shell fishes when applied to paddy fields as suggested by Obayashiet al. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

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7. Claims 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagedorn et al. (US 5,650,102) in view of Roberts (US 5,292,791).

Applicant claims a microencapsulated agrochemical composition comprising an aqueous dispersion of microcapsules having material encapsulated therein wherein the material encapsulated within the microcapsules comprises (a) an agrochemical (b) a water-insoluble, bioperformance-enhancing adjuvant for said agrochemical wherein said adjuvant has little or no surfactant properties and (c) a water-immiscible solvent in which both the agrochemical and adjuvant are soluble.

Determination of the scope and content of the prior art

(MPEP 2141.01)

The disclosure of Hagedorn et al. (US 4,808,408) has been set forth above. Specifically, Hagedorn et al. teach a microcapsule dispersion comprising insecticides or plant protection agents, and utilizing emulsifiers, which include polyglycol ethers, polypropylene glycol ethers such as those with alcohols, thiols and carboxylic acid esters and fatty alcohol polyglycol ethers fatty alcohol polypglycol ethers and lipophilic substances such as hydrocarbons and paraffins.

Roberts teach a homogenous, essentially nonaqueous adjuvant composition to improve the chemical and physical properties of a pesticides, such as an herbicide, insecticide or fungicide comprising a spray oil, a blend of surfactants and a buffering

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agent that when combined with a pesticide, the composition becomes a more uniform spread of the spray solution of the herbicide or pesticide (see the entire article, especially the abstract, column 1 lines 11-17 and column 2 lines 58-64). The preferred surfactants include peg esters of the formula



where $R=C_2-C_{25}$ fatty alkyl, $R'=C_2-C_{25}$ fatty alkyl and $m=1$ to 100 (see the entire article, especially column 3 lines 34-41).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Hagedorn et al. do not teach the adjuvant having formula (II) as claimed by Applicant.

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use an adjuvant having formula (II).

One of ordinary skill in the art would have been motivated to do this because Hagedorn et al. suggest a microcapsule dispersion comprising insecticides and utilizing emulsifiers. Although Hagedorn et al. do not suggest the instant adjuvant of formula (II), it would be obvious to one of ordinary skill in the art because surfactants such as peg esters are useful in improving the chemical and physical properties of insecticides as

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suggested by Roberts. Thus, it is an obvious variation of surfactants that may be used in the agrochemical formulations. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

Conclusion

8. No claims are allowed.

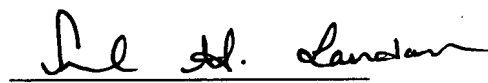
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB


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